

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|   |   |                     |
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| In the Matter of                          | ) |                     |
|   | ) |                     |
| Petition of USTelecom for Forbearance     | ) | WC Docket No. 12-61 |
| Under 47 U.S.C. § 160(c) from Enforcement | ) |                     |
| of Certain Legacy Telecommunications      | ) |                     |
| Regulations                               | ) |                     |

**OPPOSITION OF SPRINT NEXTEL CORPORATION**

Pursuant to the Public Notice released in the above-captioned docket,<sup>1</sup> Sprint Nextel Corporation (“Sprint”) hereby submits its Opposition to the Petition for Forbearance of the United States Telecom Association (“USTA”).<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

USTA seeks forbearance from a broad range of regulations that the Federal Communications Commission (“Commission”) adopted as safeguards to assist in protecting consumers and competition against the exercise of market power by incumbent local exchange carriers (“LECs”). USTA claims that these “legacy telecommunications regulations” are no longer needed in light of the growth of broadband and the adoption of the *Universal Service Reform Order*.<sup>3</sup> This is simply not true.

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<sup>1</sup> *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations*, WC Docket No. 12-61, Public Notice, DA 12-352 (rel. Mar. 8, 2012) (“Public Notice”).

<sup>2</sup> *Petition of US Telecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Petition for Forbearance of the United States Telecom Association (Feb. 16, 2012) (“Petition”).

<sup>3</sup> *Id.* at 2-3; see *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (FCC 11-161) (“*Universal Service Reform Order*”).

Even with the increased deployment of IP-based broadband facilities, enterprise customers and retail wireline and wireless carriers remain heavily reliant on incumbent LEC TDM-based facilities. Moreover, incumbent LECs also are dominant in the provision of IP-based broadband services to enterprise customers because alternative, non-incumbent controlled facilities are available at only a fraction of commercial locations.

In addition, the Commission is in the midst of a comprehensive overhaul of its regime governing intercarrier compensation for switched traffic and a detailed review of its existing special access rules. The cost and other information that incumbent LECs currently are required to record and report is relevant to those ongoing proceedings and to the reforms the Commission ultimately may adopt.<sup>4</sup> Indeed, the Commission in the past has used this information in determining rates that are just and reasonable. USTA's request that the Commission forbear from enforcing many of these recording and reporting requirements, thus, is not "consistent with the public interest."<sup>5</sup>

In short, because USTA has failed to meet its burden under section 10 of the Communications Act of 1934, as amended (the "Act" or "Communications Act"),<sup>6</sup> its Petition must be denied.<sup>7</sup>

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<sup>4</sup> Although Sprint's Opposition focuses on a subset of those categories of regulations from which USTA seeks forbearance – such as the rules related to the Uniform System of Accounts ("USOA"), Cost Assignment, ARMIS and Part 42 Recordkeeping Requirements (Categories 3, 4, 6 and 7) – Sprint's silence regarding other regulations covered by the petition should not be interpreted to mean that it supports the requested forbearance relief.

<sup>5</sup> 47 U.S.C. § 160(a)(3).

<sup>6</sup> 47 U.S.C. § 160.

<sup>7</sup> After the Commission has completed its intercarrier compensation and special access proceedings, it will be in a better position to determine whether any existing requirements can be eliminated and whether any new rules are needed to ensure that the rates, terms, and conditions of the services provided by incumbent LECs are just and reasonable.

## **II. THE COMMISSION NEEDS THE INFORMATION GENERATED PURSUANT TO ITS ACCOUNTING AND REPORTING RULES TO MAKE INFORMED DECISIONS IN ONGOING REFORM PROCEEDINGS**

USTA's emphasis on the recent growth in the deployment of IP-based broadband services cannot obscure the fact that enterprise customers and rival carriers continue to require access to traditional communications facilities and services controlled by incumbent LECs. Although for years the incumbent LECs have been predicting the demise of the public switched network, the reality is that TDM-based facilities remain a critical part of the national communications infrastructure.<sup>8</sup> In fact, enterprise customers and carriers that compete with incumbent LECs and their affiliates in downstream retail marketplaces remain dependent on DS1- and DS3-level facilities – and, increasingly, Ethernet connections – controlled by incumbent LECs as dominant carriers.

Sprint, for example, continues to require access to DS1 and DS3 special access links provided by incumbent LECs to serve its wireline end-user customers, including small, medium and large enterprise business customers.<sup>9</sup> As Sprint has explained in various FCC filings, “the vast majority of business broadband services continue to rely on DS1 and DS3 special access facilities” and the excessive rates and onerous terms and conditions for these inputs severely hamper Sprint's ability to provide broadband services to end-user customers.<sup>10</sup>

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<sup>8</sup> See, e.g., Reply Comments of the Ad Hoc Telecommunications Users Committee, WC Docket No. 05-25, at 2-5 (Feb. 24, 2010) (“Ad Hoc Feb. 24, 2010 Reply”) (rebutting AT&T's assertion that traditional special access services “are going the way of the dodo” and explaining that these services remain extremely relevant to American businesses).

<sup>9</sup> Sprint relies on incumbent LEC facilities to provide not only traditional telecommunications services, but also to provide broadband services to its retail customers.

<sup>10</sup> Comments of Sprint Nextel Corporation, WC Docket No. 10-188, at 2 (Oct. 15, 2010). As various reports have repeatedly demonstrated, there is little, if any, competition for DS1 and DS3 facilities. See, e.g., Peter Bluhm and Robert Loube, National Regulatory Research Institute, *Competitive Issues in Special Access Markets*, Revised Edition, at 42 (Jan. 21, 2009), available at: <[http://nrri.org/pubs/telecommunications/NRRI\\_spcl\\_access\\_mkts\\_jan09-02.pdf](http://nrri.org/pubs/telecommunications/NRRI_spcl_access_mkts_jan09-02.pdf)>

Sprint's position is supported by the quantitative data submitted to the Commission showing that TDM and/or copper-based incumbent LEC special access facilities are "the most common building blocks of corporate networks and will remain so for the foreseeable future."<sup>11</sup> Indeed, the National Broadband Plan recognized the critical role that TDM-based special access services play in the deployment of broadband services.<sup>12</sup> Moreover, TDM continues to be the primary means by which competitors interconnect with incumbent LECs (largely due to the reluctance of incumbent LECs to establish IP interconnection arrangements) and with other carriers, including incumbent LEC affiliates (due to incumbent LEC control over TDM transit). Given carriers' and end users' continued reliance on traditional TDM-based facilities and services, it is critical that the Commission retain the ability to review the cost and other information currently recorded and reported by incumbent LECs<sup>13</sup> in order to fulfill its statutory obligation of ensuring that customers obtain service at just and reasonable rates.<sup>14</sup>

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(concluding, among other things, that incumbent LECs control an overwhelming share of the market for DS1 and DS3 facilities); *see also* United States Government Accountability Office, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, Report No. GAO-07-80, at Highlights (Nov. 2006), *available at*: <<http://www.gao.gov/assets/260/254069.pdf>> (concluding that "[i]n the 16 major metropolitan areas we examined, available data suggest that facilities-based competitive alternatives for dedicated access are not widely available.").

<sup>11</sup> Ad Hoc Feb. 24, 2010 Reply at 5.

<sup>12</sup> FCC, *Connecting America: The National Broadband Plan*, at 48 (rel. Mar. 16, 2010), *available at*: <<http://download.broadband.gov/plan/national-broadband-plan.pdf>> (noting that "[s]pecial access circuits play a significant role in the availability and pricing of broadband service," explaining that they constitute a "significant expense of offering broadband service, particularly in small, rural communities," and that the Commission "needs to establish an analytical approach that will . . . ensure that rates, terms and conditions for these services are just and reasonable.").

<sup>13</sup> The data reported and recorded by incumbent LECs discussed throughout these comments include information kept and recorded as part of USOA, the Commission's cost assignment rules, and the ARMIS requirements.

<sup>14</sup> 47 U.S.C. § 201(b).

The data that USTA seeks to avoid reporting also continue to be important to the Commission's ongoing efforts to complete a comprehensive reform of its rules governing both intercarrier compensation for switched services as well as special access services. Although USTA correctly notes that the FCC recently adopted new rules governing certain intercarrier compensation arrangements,<sup>15</sup> those rules do not obviate the need for the cost data collected and reported pursuant to many of the rules from which USTA seeks forbearance.

As a threshold matter, the Commission's efforts to reform intercarrier compensation for switched traffic remain a work in progress.<sup>16</sup> The multi-year transition for most switched terminating traffic has just commenced<sup>17</sup> and has been challenged on appeal.<sup>18</sup> In addition, some of the policies and rules adopted in the Intercarrier Compensation rulemaking may require continued access to incumbent LEC cost data in the future.<sup>19</sup> Further, the reform plan for originating switched traffic, transit, and certain forms of transport is the subject of a pending Further Notice of Proposed Rulemaking. As part of that proceeding, the Commission is examining, *inter alia*, "how the costs of the local loop have been allocated between its use for

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<sup>15</sup> Petition at 2.

<sup>16</sup> See, e.g., *Universal Service Reform Order*, 26 FCC Rcd 17663, ¶ 928 ("Notwithstanding our intercarrier compensation reform, carriers will continue to receive revenues from other uses of the local network. . . . [Some] intercarrier compensation rates will be subject to minimal – or no – reforms at this time. Consequently, incumbent LECs will continue to collect intercarrier compensation for originating access and dedicated transport . . .").

<sup>17</sup> See *id.* ¶ 801.

<sup>18</sup> See appeals consolidated in the United States Court of Appeals for the Tenth Circuit under *In re: FCC 11-161* as No. 11-9900.

<sup>19</sup> For example, the Commission has adopted a mechanism for incumbent LECs to recover access revenues lost as a result of the reforms. If a LEC claims that the new access revenue recovery mechanism is insufficient and seeks additional recovery, it will be subject to a Total Cost and Earnings Review. Part of that review will involve the FCC's analysis of whether the incumbent has properly allocated the costs of regulated and unregulated services. See *Universal Service Reform Order* ¶ 931.

regulated voice telephone service and its use for other services such as broadband Internet access, video, or other nonregulated services.”<sup>20</sup>

The Commission also is in the process of conducting a comprehensive review of its rules governing incumbent LECs’ provision of special access services.<sup>21</sup> This review includes an analysis of the reasonableness of existing price cap rates, as well as an assessment of the need to adjust the rates for services that currently are provided outside of price caps. In the past, the Commission has relied in part on the costs recorded by incumbent LECs pursuant to Part 32 and other cost-related rules to assess the reasonableness of special access rates.<sup>22</sup> As parties to the special access proceeding have noted, the wide disparity between the incumbent LECs’ recorded costs and their rates is directly relevant to the Commission’s analysis of the reasonableness of special access prices.<sup>23</sup>

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<sup>20</sup> *Id.* ¶ 1331.

<sup>21</sup> *See, e.g., Competition Data Requested in Special Access NPRM*, Public Notice, 26 FCC Rcd 14000 (2011); *see also Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (“*Special Access Order and NPRM*”).

<sup>22</sup> *See, e.g., Special Access Order and NPRM* ¶¶ 28-29, 35-64 (2005) (analyzing ARMIS data and discussing the relevance of the FCC’s accounting rules and ARMIS reporting requirements to determining what constitutes reasonable rates for special access services); *see also Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990) (discussing relationship between price cap rates and underlying costs).

<sup>23</sup> *See, e.g., Comments of the Ad Hoc Telecommunications Users Committee*, WC Docket No. 05-25, at 14-15 (Jan. 19, 2010) (relying on ARMIS data to demonstrate that incumbent LEC special access rates are unjust and unreasonable.). Moreover, although USTA claims that “Part 32 requirements serve no regulatory purpose,” Petition at 37, it is noteworthy that the Commission staff just four months ago found that “regardless of the need for those data to implement existing price cap regulations, and notwithstanding accounting oversight in other contexts, compliance with the Part 32 accounts helps ensure that potentially relevant data remain available to the Commission ‘for regulatory purposes, including rulemakings or adjudications, in the future.’” *Commission 2010 Biennial Review of Telecommunications Regulations*, Public Notice, 26 FCC Rcd 16943, DA 11-2050 at 4 (2011) (citation omitted).

In addition, the information captured in the Commission's existing accounting and reporting rules could play an important role if the Commission decided to change the treatment of services currently subject to Phase II pricing flexibility or update the productivity factor that applies to price cap rates.<sup>24</sup> In short, in light of the continuing importance of incumbent LEC facilities to enterprise customers, as well as to competitive wireline and wireless carriers, and the pendency of the Commission's reform proceedings, the forbearance relief requested by USTA is not consistent with the public interest.<sup>25</sup>

### **III. THE COMMISSION SHOULD MODIFY OUTDATED PHYSICAL RECORDKEEPING REQUIREMENTS**

USTA also asks the Commission to forbear from applying certain recordkeeping requirements to all carriers.<sup>26</sup> Sprint agrees that the current rules requiring carriers to maintain certain records at various physical locations are outdated. The Commission should allow carriers to keep these records in electronic form. Further, the Commission should require records that

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<sup>24</sup> See *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*; *Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302, ¶ 19 (2008) (rejecting AT&T's argument that the FCC's accounting rules "play no role in price cap regulation," *id.* ¶ 19 n.72, and noting that accounting information could prove necessary as the FCC considers adjusting or reforming its existing price cap regime).

<sup>25</sup> USTA's Petition also largely ignores the effect its forbearance request would have on state commissions, which rely on the Commission's reporting requirements for their own regulatory purposes. See Comments of the Kansas Corporation Commission, WC Docket No. 04-179, at 3 (filed July 12, 2004) ("If the Commission eliminates requirements deemed necessary by the states, each state may opt to develop its own system of accounts. This may result in more, not less, regulatory expense for telecommunications carriers."); see also Comments of the Wyoming Public Service Commission, WC Docket No. 02-313, at 3 (Oct. 17, 2002) ("If the Commission were to modify [the Uniform System of Accounts] in a substantial or adverse way relative to the needs of the states, the states would be required to reexamine their individual accounting needs, perhaps forcing an administrative nightmare for the companies who would be required to track separate accounting requirements in each state.").

<sup>26</sup> Petition at 47.

previously were kept in a physical location for access by customers (e.g., rate information regarding interexchange services) to be posted online where they will be more easily accessible to the public. Such a requirement would benefit consumers and more effectively protect the public interest.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should deny the Petition.

Respectfully submitted,

**SPRINT NEXTEL CORPORATION**

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Dated: April 9, 2012



### **Certificate of Service**

I hereby certify that on this 9th day of April, 2012, I caused a true and correct copy of the foregoing Opposition of Sprint Nextel Corporation to be mailed by electronic mail to:

The Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
CPDcopies@fcc.gov

and

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Additionally, a copy of the foregoing Opposition of Sprint Nextel Corporation was mailed by first class U.S. mail to:

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/s/ Ruth E. Holder  
Ruth E. Holder